

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of:	)	
	)	
ELECTRIC LIGHTWAVE, INC., ET AL.	)	CC Docket 97-90
	)	CCB/CPD 97-12
	)	
Petition for Declaratory Ruling and Contingent	)	
Petition for Preemption on Interconnection	)	
Cost Surcharges	)	

**REPLY COMMENTS OF MCI**

MCI Telecommunications Corporation ("MCI") hereby submits reply comments in response to parties' comments filed in the above-captioned proceeding on April 3, 1997.

In its Opposition, US WEST once again resorts to rhetoric, claiming that this petition represents "brazen" attempts of potential competitors to "expropriate the private property of incumbent local exchange carriers." US WEST Opposition at 1. Clearly, US WEST's Opposition does not demonstrate that its ICAM proceedings are in any way justified or consistent with the Telecommunications Act of 1996 (the "Act").<sup>1/</sup> Once again, it makes only vague assertions regarding the costs that it claims should be recovered through ICAM proceedings, and makes no attempt to demonstrate that any costs that are properly recoverable would not be recoverable in rates for unbundled elements based on TELRIC or in resale rates based on net voided costs.

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<sup>1/</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act), to be codified at 47 U.S.C. Sec.151 et.seq.

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Although US WEST makes the assertion that the Commission's Order supports its attempt to recover "costs" through ICAM proceedings, its Opposition points to nothing to substantiate the assertion. The "random sampling" of language from the Order included in its Opposition is not, in fact, random -- the language was carefully chosen and then taken out of context. In fact, the language US WEST quotes merely reflects the Commission's determination that, if a CLEC requires access to unbundled network elements at quality that is higher than that the ILEC provides itself, the CLEC must pay for the incremental cost of providing the superior quality.

Notably, in "randomly sampling" the Order, US WEST ignores those portions of the Order that are directly relevant. In the Order, the Commission expressly determined that "under a TELRIC methodology, incumbent LECs' prices for interconnection shall recover the forward-looking costs directly attributable to the specified element, as well as a reasonable allocation of forward-looking common costs." Order at ¶682. Thus, properly designed TELRIC-based rates will capture all properly allocable costs, and "provide[] for . . . a reasonable profit." Order at ¶699. Despite US WEST's rhetoric, nothing it points to suggests otherwise.<sup>2/</sup>

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<sup>2/</sup> A number of commenters noted that all properly recoverable costs can and will be included in TELRIC-based rates. See, e.g., Comments of ACSI at 3 ("TELRIC-based prices should include *all* relevant costs of interconnecting with and making unbundled network elements available to new entrants"); Comments of Sprint at 4 ("the TELRIC rate standard adopted by the Commission affords ILECs the opportunity to recovery (sic) their just and reasonable costs of providing interconnection and unbundled network elements. It is simply not the case that U S West will be unable to recover its network upgrade costs absent adoption of its proposed ICAM surcharges."); Comments of the Association for Local Telecommunications Services ("ALTS") at 6 ("the forward-looking pricing principles demanded by Sections 251 and 252, and adopted by the Commission, (as well as several states which have addressed this issue) to govern pricing (continued...)")

Ignoring this, US WEST suggests that, if it is not allowed to recover ICAM surcharges, it will have suffered an unconstitutional taking in violation of the Fifth Amendment. Thus, US WEST argues, because the Act may require it to build or improve some of its facilities so that local markets can be opened to competition, and because, it claims, the full cost of such improvements are not captured through TELRIC, it has been subject to a confiscatory taking. US WEST is wrong. All regulation imposes costs which may not be immediately and directly recoverable. That does not mean, of course, that all regulation imposes a taking. Thus, even if US WEST would not recapture each and every dollar it expends to comply with the Act, binding Supreme Court precedent dictates that no taking would occur unless US WEST as a whole was precluded from earning a reasonable profit. See Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 602 (1944).

In its Opposition, US WEST has not attempted to demonstrate that it can meet that test. Instead, it argues that the Act and the Commission's regulations should be analyzed under the constitutional standard for a "physical seizure of property" because the requirement that US WEST subject itself to competition is equivalent to the Government's seizure of the Youngstown Steel plant, Opposition at 8, and subjects US WEST to "forced servitude." Id. These arguments are as baseless as they sound. The Act does not require US WEST to physically relinquish its assets. It merely recognizes the advantages US WEST has accrued from being the monopoly provider of local phone

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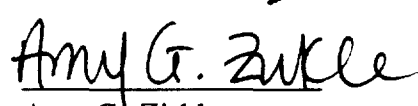
<sup>2/</sup> (...continued)

of interconnection agreements already conceptually encompass all costs that would be caused by CLECs...").

service in its region, and provides the means through which real competition can be realized.

Although US WEST is unhappy with this, it cannot be allowed to use tactics like the ICAM proceedings to thwart the Congressional goal of opening local markets to competition. ELI's request that the Commission preempt these ICAM proceedings should therefore be expeditiously granted.

Respectfully submitted,

A handwritten signature in cursive script that reads "Amy G. Zirkle". The signature is written in dark ink and is positioned above the printed name.

Amy G. Zirkle

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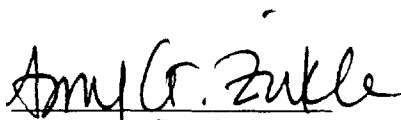
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Dated: April 28, 1997

**STATEMENT OF VERIFICATION**

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct.

Executed on April 28, 1997

A handwritten signature in cursive script, reading "Amy G. Zirkle". The signature is written in dark ink and is positioned above a horizontal line.

Amy G. Zirkle

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I, Mellanese Farrington, hereby certify that on this 28th day of April 1997, I served by first-class United States Mail, postage prepaid, a true copy of the foregoing Reply Comments, upon the following:

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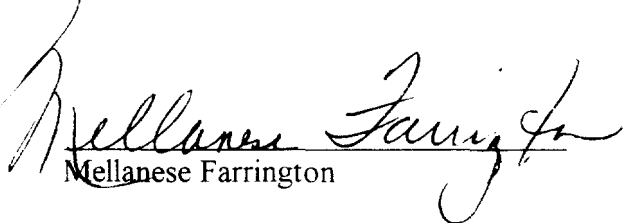
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